a

C. PARANTHAMAN

v.

SIME DARBY BERHAD (SIME DARBY PLANTATIONS)

HIGH COURT MALAYA, KUALA LUMPUR
DATO' SITI NORMA BTE YAAKOB J.
b [ORIGINATING MOTION NO. R2-25-144-92]
2 SEPTEMBER 1994

INDUSTRIAL LAW: Estate manager found guilty of cross charging estate expenditure - Given warning letter and demoted - Subsequent similar offence - Employer dismissing estate manager from service -Industrial Court ruling dismissal justified - Application
c ***for writs of certiorari and mandamus to quash Industrial Court award.***

The applicant was the estate manager of the respondent. In 1986 the applicant was given a warning letter and a demotion following his conduct in cross charging the estate expenditure. In 1989 a domestic inquiry found the applicant guilty of again cross charging and the applicant was dismissed from the services of the respondent. The
d applicants claim before the Industrial Court was dismissed, the Industrial Court holding that the dismissal was justified.

The applicant applied for writs of *certiorari* and *mandamus* contending that cross charging did not amount to conduct that warranted dismissal as it was a common practice in the estates, it benefited the estates and there was no element of cheating. The applicant therefore argued that the award of the Industrial Court was unreasonable.

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Held:

[1] The test to be applied here is not whether the Industrial Court had been unreasonable in handing down the award based on all the factors that had been considered by it, but whether the act of cross charging, *per se*, amounts to conduct that warrants dismissal.

f **[2]** This is a case of wilful disobedience and nothing more. As such, considerations that such cross charging was a common practice, it benefited the respondent and that there was no element of cheating are irrelevant. From the records it is clear that the respondent never conceded that cross charging was a common practice in the estates although it acknowledged the fact that such unhealthy practice had occured and anyone caught doing it would be punished. This stand is consistent with the respondent warning
g the applicant in 1986 that any future conduct of cross charging on his part would entail dismissal.

[3] The applicant's contention that his conduct had benefited the respondent cannot form a defence to his conduct as the applicant was fully aware from the respondent's existing guidelines and standing instructions that any misconduct on his part will
h justify the respondent dismissing him. Similarly the applicant's contention that there was no element of cheating or dishonesty is a non-issue as the four charges before the domestic inquiry related to his conduct in cross charging and not for cheating.

[4] It was clear from the award that the learned Chairman had addressed her mind to the applicant's conduct in wilfully disobeying the respondent's guidelines and standing instructions and on the facts of the case there was no reason to quash her award.

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[Applicant's originating motion dismissed with costs].

Legislation referred to:
Industrial Relations Act, 1967, s. 20(1)

For the applicant - Anand Ponnudurai; M/s. Lobo & Associates
For the respondent - N. Sivabalah; M/s. Shearn Delamore & Co.

JUDGMENT

Dato' Siti Norma Bte Yaakob J:
On 8 December 1986, the applicant was an estate manager with the respondent when he was given a warning letter and a demotion following his conduct in cross charging the estate expenditure. The applicant justified his conduct by stating that what he did was right, it benefited the respondent and that he would continue doing so.

In 1989, the applicant cross charged again and he was asked to attend a domestic inquiry to answer 4 charges. The first and second charges refer to the applicant approving work which was in fact not done. The third charge is strictly not cross charging as it relates to the applicant authorising the payment of money to a contractor when the applicant was fully aware that the contractor had adulterated a weed killer in the execution of 4 contracts which the respondent had entered into with the contractor. The fourth charge relates to the applicant falsifying the respondent's records which he maintains was for the benefit of the respondent.

The inquiry found the applicant guilty of all 4 charges and on 23 December 1989, the respondent dismissed the applicant from its establishment.

The applicant made representations to the Director General for Industrial Relations under s. 20(1) of the Industrial Relations Act, 1967 (the Act), alleging that he was dismissed without just cause or excuse and the Minister of Labour, in turn, referred the representations to the Industrial Court.

The Industrial Court heard the reference and in Award No. 324 of 1992 dated 23 November 1992, dismissed the applicant's claim and ruled that his dismissal was justified. Dissatisfied, the applicant now applies for the orders of *certiorari* and *mandamus* to quash Award No. 324 of 1992 as well as to re-hear his claim before another Chairman of the Industrial Court.

The only issue raised is whether cross charging amounts to conduct that warrants dismissal. The applicant states it does not, as:

(1) it was a common practice in the estates,

(2) it benefited the estates,

(3) there is no element of cheating,

and because of this, the award of the Industrial Court was most unreasonable.

The test to be applied here is not whether the Industrial Court had been unreasonable in handing down Award No. 324 of 1992 based on all the factors that had been considered by it, but whether the act of cross charging, per se, amounts to conduct that warrants dismissal. This is a case of wilful disobedience and nothing more. As such, considerations that such cross charging was a common practice, it benefited the respondent and that there was no element of cheating are irrelevant. From the records it is clear that the respondent never conceded that cross charging was a common practice in the estates although it acknowledged the fact that such unhealthy practice had occurred and

anyone caught doing it would be punished. This stand is consistent with the respondent warning the applicant on 8 December 1986, that any future conduct of cross charging on his part would entail dismissal. In the same warning letter, the applicant was demoted to manage a smaller property of the respondent following the applicant's admission that he had cross charged the estate expenditure.

The applicant has always maintained that his conduct had benefited the respondent. This contention cannot form a defence to his conduct as the applicant was fully aware from the respondent's existing guidelines and standing instructions that any misconduct on his part will justify the respondent dismissing him. This seems more so when the applicant had admitted that he approved payments on the contracts referred to in the 1st, 2nd and 4th charges when he was fully aware that no work was done as stated in the 1st and 2nd charges and that the rate was inflated as stated in the 4th charge. In the case of the 3rd charge, it was the applicant who approved payment to the contractor despite knowledge of the fact that the contractor had adulterated the chemicals.

As for the applicant's contention that his conduct involves no element of cheating or dishonesty, this is again a non-issue as the four charges refer to his conduct in cross charging and not for cheating.

From the Chairman's judgment it is clear that she had addressed her mind to the applicant's conduct in wilfully disobeying the respondent's guidelines and standing instructions and on the facts of this case, I see no reason to quash her award. On that finding, I had dismissed the applicant's originating motion with costs.